



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

SEP 13 2002

The Honorable John Conyers, Jr.  
Ranking Minority Member  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515-3951

Dear Congressman Conyers:

I am writing in response to your letter of August 23, 2002, to the Attorney General, in which you claim that the Department of Justice "may have given misleading information to Congress" and that the Department submitted a "misleading response" to the Committee's questions concerning the recent opinion of the Foreign Intelligence Surveillance Court. In light of those statements, a review of the facts is in order.

First, your letter misstates the answer given by the Department to the Committee's question. The Department's July 26, 2002, letter states that "[t]he 'primary purpose' standard \* \* \* has not had its principal impact with respect to the government's certification of purpose concerning the use of FISA itself \* \* \* " (emphasis added). When you quote that sentence in your letter of August 23, however, you omit the underlined word "not," thus portraying the Department's answer to be precisely the opposite of what it was.

More important, the answer submitted to the Committee on July 26 is accurate. In approving in part and disapproving in part the Department's new Intelligence Sharing Procedures, the FISA Court did evince a "tolerance of increased law enforcement investigations and activity connected to, and coordinated with, related intelligence investigations in which FISA is being used." All searches and surveillance of United States persons under FISA are based on activity which either is, or may be, fraudulent or criminal, 50 U.S.C. § 1801(b)(2), and FISA has always allowed information obtained from lawful searches and surveillance to be used in criminal prosecutions. See 50 U.S.C. § 1806. Thus, coordination between intelligence and law enforcement officials is of critical importance. Such coordination has two main aspects: Information-sharing and advice-giving. While the FISA Court did not accept in full the Department's standards governing advice-giving, it did accept in full the Department's new

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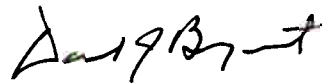
standards governing information-sharing. That acceptance represents an increase in authorized coordination, though not as much of an increase as the Department sought.

Furthermore, the Department firmly believes that the Court misinterpreted the USA PATRIOT Act, and that the Court's reasoning fails to give effect to the Act by relying on provisions of FISA not amended by the Act. However, the FISC described itself as applying "the plain meaning of consultations and coordination now specifically authorized in the Act." Thus, even if (in our view) the logic of the Court's opinion is flawed and does not properly implement the USA PATRIOT Act, the Court's own words evidence that it was apparently motivated by the Act to authorize an increase in coordination.

Finally, your letter urges the Department to provide complete answers to the questions recently posed by your Committee regarding the USA PATRIOT Act. As you are aware, the Department has provided your Committee with answers to all fifty questions it posed. These answers were contained in letters to the Committee dated July 26, 2002, and August 26, 2002. As you know, six out of the fifty questions posed by your Committee required the disclosure of sensitive operational intelligence information in order to provide a complete answer. In accordance with the long-standing accommodation regarding sensitive intelligence information, first established upon the creation of the intelligence committees of Congress and perpetuated by the passage of Title V of the National Security Act of 1947, 50 U.S.C. § 413-15, the Department has provided these six classified responses to the House Permanent Select Committee on Intelligence (HPSCI). We encourage you, in accordance with this longstanding practice, to request access to those answers through HPSCI. Nevertheless, we would be pleased to listen to your thoughts on this process and discuss with you the history of this accommodation and why, at this time, we believe it is an appropriate mechanism through which to provide this limited subset of information to the Committee.

As indicated above, the Department has, and will continue to make good faith efforts to respond to the legitimate oversight requests of the Committee. We remain ready to discuss any outstanding or additional requests the Committee may have with respect to these or other issues.

Sincerely,



Daniel J. Bryant  
Assistant Attorney General

cc: The Honorable F. James Sensenbrenner, Jr.  
Chairman